

REMARKS

Applicants respectfully request reconsideration of the claims in view of the following remarks. No amendments have been made to the claims in the present paper. Applicants submit the claims as amended in the response filed October 9, 2009 and December 23, 2009 are allowable in view of the following remarks. A Notice of Allowance is therefore requested.

Rejections Under 35 U.S.C. § 103

(1) Claims 1-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mitsuda (U.S. 4,396,636) in view of Mayr (Appl. Environ. Microbiol., 69(8):4697-4705). Applicants respectfully traverse this rejection.

The process described in the present application is directed to overcoming obstacles specific to a distant country like Chile to market perishable meat products, especially seafood products. Perishable meat products must be handled expeditiously as delays in shipment to Europe from a distant country like Chile may significantly affect the marketability of the perishable meat products. For example, in 1987 a 40 ton air shipment of fresh toothfish from Chile to Madrid, Spain arrived in Madrid on a Saturday was not unloaded until the next working day. The delay in unloading of the shipment of fresh toothfish was such that the fish were no longer in condition for being sold at market. Moreover, in countries such as Europe, fresh meat products such as fish can be sold at much greater prices (as much as 4:1) compared to the same fish that is frozen.

To address the problems associated with shipping perishable meat products to distant foreign markets, Applicants began to experiment with the objective of offering a natural product, with original features as a fresh product, that could be shipped without incurring the high demands and costs associated with air transport. After many years of experimentation, testing, and validation, Applicants achieved and validated the claimed process. The claimed process is not comparable to previously known industrial processes and provides a preserved food product having the organoleptic properties of fresh meat, even after tens of months of being treated by the process.

A fresh product is a product with the same characteristics of a recently produced or obtained product, like a product made just before the present time. Accordingly, a traditional frozen product does not comply with the features of a fresh product. The method of the present invention is a physical and natural process, which excludes chemicals and is founded on the application of steps in a specific sequence and timing in combination with utilizing packaging materials having strict and defined properties of gas and water vapor permeability (see, for example, the table at page 8 of the specification) that results in the preservation of foods in their natural and original state for an extended period of time (i.e. tens of months). Prior to filing of the present application, the results of the presently claimed process was certified by CESMEC Laboratories, Santiago de Chile, as presented in Exhibit 1 (attached), where the laboratory proved the state of the preserved meat as "equivalent to fresh" on a sample of 13 months from the preservation process, with best properties of color, smell, texture and taste compared to a "fresh" food equivalent.

None of the cited references discloses a process that provides a preserved product having organoleptic properties similar to a fresh food product that is suitable for consumption after an extended period of time (i.e. several tens of months) while maintaining organoleptic properties equivalent to a fresh food product. Specifically, none of the cited references alone or in combination disclose or suggest a preserved food product having such fresh organoleptic properties or a process comprising the presently claimed sequential steps of cutting meat, quick freezing the meat, packaging the meat, vacuum sealing the meat, and freezing the meat under the conditions recited in the claims that provides a preserved food product having such fresh organoleptic properties after an extended period of time.

Fluid retention is an important aspect of the claimed process to provide a preserved meat product having organoleptic properties similar to a fresh food product. The combination of freezing and packing steps in the particular order and under the particular time and temperature conditions recited in the claims retains the fluids of the meat and allows the defrosted meat product to retain the "fresh product" juiciness and taste. In the claimed process, the meat is subjected to an initial quick freezing process of the type IQF. IQF does not include a freezing medium.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also contains a motivation or suggestion to modify or combine the references. *In re Mills*, 916 F.2d 680, 682 (Fed. Cir. 1990). "[A] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP § 2141.02 citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983) *cert. denied*, 469 U.S. 851 (1984). It is improper to combine references where the references teach away from their combination. MPEP § 2145(X)(D)(2) citing *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). If a proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP § 2144(VI) citing *In re Ratti*, 270 F.2d 810 (CCPA 1959).

In contrast to Applicants' claims, Mitsuda requires the use of a freezing medium. The process disclosed in Mitsuda requires the step of forming an ice-capsule through exposing the fish to -80°C to -100°C using a glazing solution, and then the fish reach 0°C at the center of the food in a chilled environment of -25°C to -35°C. Mitsuda therefore teaches away from freezing methods that do not include a freezing medium.

Mitsuda, unlike Applicants' claims, also does not restrict the amount of time to perform the freezing operation. Mitsuda does not control the freezing step to a certain temperature in the center of the meat product within a specific processing time as required by the claims, or disclose or suggest the packaging and high vacuum packing process required by the claims. Subjecting the meat product to an initial quick freezing process of the type IQF wherein the temperature reaches -5°C at the center of the meat in less than 1 hour as recited in claim 1 avoids formation of ice crystals in the meat thus avoiding damage to the cellular membrane of the meat and potential dehydration and maintains the texture of the meat. See the specification, for example, at page 7, lines 1-7. Once the temperature is reached, the product is packed in special packages with high impermeability to gases (as well as to water vapor) and then frozen to -18°C at the center of the meat in less than 2 hours. This package protects the meat against exposure to dehydration, contamination from environment, odors and surrounding liquids, and also protects the meat against oxidation.

The Office Action at page 3 acknowledges that Mitsuda does not disclose part c or part d of claim 1 but alleges it would have been obvious to modify the process disclosed in Mitsuda to include the packaging and vacuum system taught by Mayr. Applicants do not agree.

Mayr is directed to a laboratory technique to analyze damage to the original features of a meat product. The meat in Mayr is unfrozen before vacuum packaging. Therefore, the vacuum sealing causes the outflow of the natural and original meat fluids because the meat is not frozen until after the vacuum packaging process. The process disclosed in Mayr accordingly does not achieve the objective of the present invention which is a preserved meat product having the organoleptic properties of a fresh meat product. Moreover, the meat samples in Mayr were only tested after 11 days of storage, whereas the claimed process provides a meat product having organoleptic properties of a fresh meat product after tens of months of storage, Exhibit 1 shows that meat packaged according to the claimed process has organoleptic properties equivalent to fresh meat product after 13 months.

The logical combination of Mitsuda and Mayr results in a packaged ice capsule, wherein the ice capsule comprises the meat submerged in a freezing medium. The presently claimed invention does not make use of a freezing medium. Claim 1 recites the novel sequential steps of cutting meat, quick freezing meat, packing meat, vacuum sealing the packed meat and freezing meat again. The quick freezing step in claim 1 of the type IQF does not use a freezing medium. The sequential steps and specific time and temperature conditions recited in the claims avoid the exudation of meat that is common to both the Mitsuda and Mayr references. Therefore, absent Applicants' disclosure, one of ordinary skill in the art would not have been reasonably motivated to combine Mitsuda and Mayr as alleged in the Office Action to arrive at the claims.

Moreover, the present application is a national stage of PCT application number PCT/BR2004/00223. In the Written Opinion of the International Searching Authority, it was established that the application fulfills the patentability requirements of novelty, inventiveness and industrial applicability. Only documents defining the general state of the art, which are not considered to be of particular relevance were cited in the International Search Report (ISR). Accordingly, the application has been granted in China, Mexico, Canada, Russia, India, South Africa, Chile and Hong Kong. Applicants note that the U.S. is a party to the PCT and that none

of the documents cited by the Examiner in the present Office Action were considered as state of the art in the ISR.

In view of the foregoing, Applicants submit the Office Action has failed to establish a *prima facie* case of obviousness. The cited combination of references does not disclose or suggest all the elements of the claims and teaches away from the claims. Withdrawal of the rejection is respectfully requested.

(2) Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Mitsuda in view of Mayr in further view of Weerawardena (GB 2360690). Applicants respectfully traverse this rejection.

The combination of Mitsuda and Mayr does not disclose or suggest all the elements of the claims for the reasons discussed above. Weerawardena does not cure the deficiencies of the combination of Mitsuda and Mayr.

Weerawardena discloses an industrial process where a frozen block of fish or meat is cryogenically frozen and then tempered to a cutting temperature lower than the degradation temperature of the block, followed by slicing the block using a slicing machine and then cryogenically refreezing. This process differs from the process disclosed by the present application where the meat is prepared before cutting the meat and then the meat is quickly frozen. An intermediate stage where the meat is tempered does not exist in the presently claimed process. In contrast to Weerawardena, the claims require stages of sequential freezing in descending steps of temperature in order to preserve the organoleptic properties of a fresh product. Moreover, the cryogenic process disclosed in Weerawardena is a much more expensive process than IQF and is not necessary in the process of the present invention. Therefore, absent Applicants' disclosure, one of ordinary skill in the art would not have been reasonably motivated to combine Mitsuda and Mayr as alleged in the Office Action to arrive at the claims.

In view of the foregoing, Applicants submit the Office Action has failed to establish a *prima facie* case of obviousness. The cited combination of references does not disclose or suggest all the elements of the claims and teaches away from the claims. Withdrawal of the rejection is respectfully requested.

Summary

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

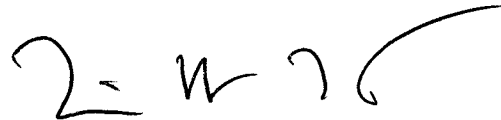
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: _____

30 June 2010

23552

PATENT TRADEMARK OFFICE



Brian H. Batzli
Reg. No. 32,960
BHB:EED:jrm